

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 CAPITOL MALL, 17TH FLOOR
SACRAMENTO, CALIFORNIA 95814**

INITIAL STATEMENT OF REASONS

**File No. RH-01017313
December 28, 2001
[corrected February 19, 2002]¹**

COMMISSIONER'S REPORT ON UNDERSERVED COMMUNITIES

INTRODUCTION

California Insurance Commissioner Harry W. Low, (hereinafter, "Commissioner") proposes the amendment of Title 10, Chapter 5, Subchapter 4.8, Article 6, Sections 2646.6 through 2646.11, inclusive of the California Code of Regulations (CCR), regarding the Commissioner's Report on Underserved Communities. The purpose of the proposed amendment of these existing regulations is to further implement, interpret, and make specific California Insurance Code Section 1861.03 regarding the prohibition of unfair insurance practices.

DESCRIPTION OF THE PUBLIC PROBLEM

The voters of the State of California passed California Insurance Code Section 1861.03, regarding the prohibition of unfair insurance practices, in 1988 as part of Proposition 103 [Reduction and Control of Insurance Rates]. Proposition 103 incorporates California Civil Code Sections 51 through 53, inclusive [Unruh Civil Rights Act, "Unruh"] and makes the anti-discrimination provisions of Unruh applicable to the business of insurance.

CCR Sections 2646.6 *et seq.* were promulgated in 1992 to implement, interpret and make specific the provisions of CIC Section 1861.03. Those regulations were subsequently substantively amended in 1995.

The data gathered pursuant to this regulation is compiled and analyzed by the Department and provides the Commissioner with foundational information that supports the annual Commissioner's Report on Underserved Communities.

The Commissioner has determined that the regulations should be amended so that the data that is provided to and analyzed by the Department is as complete as possible and maintains the highest level of statistical significance.

¹ This initial statement was amended and re-published on February 19, 2002 to correct non-substantive, formatting errors.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION AND SUBPART

The specific purpose of the amendment of each regulation and the rationale for the determination that each proposed amendment is reasonably necessary to carry out the purpose for which it is proposed, is set forth below.

Amended Section 2646.6(a)

Specific Purpose: The specific purpose of the proposed amendment to this subsection is to remove the ten million-dollar threshold on the amount of annual premium that a carrier writes prior to its being subject to the regulatory requirement is to ensure that the maximum amount of statistically significant data is provided to the Department with respect to the availability and affordability of insurance products in Underserved Communities.

Rational for Necessity: Currently, this threshold amount effectively limits the Underserved Communities data provided to the Department by as much as 46%, depending on line of coverage, compared to the total of all statistically significant data that otherwise would be subject to the regulation.

Amended Section 2646.6(b)

Specific Purpose: The specific purpose of the proposed amendment to this subsection would be to require that carriers provide written, as well as earned premium data to the Department; that carriers would not provide data for private passenger automobile physical damage; commercial automobile liability; commercial automobile physical damage and liability other than automobile coverages. Further, this amended subsection would require private passenger automobile liability carrier to provide information on policies issued through CAARP and would require the FAIR Plan to report data on policies issued pursuant to the FAIR Plan, and would also require carriers writing commercial multiple peril coverages to report data for policies having an annual premium in excess of \$7500.00.

This amended subsection would eliminate the requirement that carriers report data on the number of employed or captive agents and their employed or independent claims adjusters and would provide that the Department would develop and provide to carriers, a form for gathering the requested data on the Race, National Origin and Gender (RNOG) of applicants and that RNOG data would be submitted directly to the Department for compilation and analysis.

This amended section would eliminate the requirement that carriers provide data on the number of applications received on a by line basis, as well as data detailing the number of declinations issued.

Rational for Necessity: After a number of years of analysis, the Commissioner has determined that data regarding certain lines of coverage (private passenger automobile physical damage, commercial automobile liability, commercial automobile physical damage and liability other than automobile); and number of agents and claims adjusters is either available to the Department from other confidential sources or is not sufficiently statistically significant to justify its continued collection. Further, the Commissioner has determined that RNOG information may

be more readily provided, and therefore, more useful to the analysis of Underserved Communities, if the form for collection of the data were provided by the Department and if the data was provided directly to the Department for compilation and analysis.

Amended Section 2646.6(c)

Specific Purpose: The specific purpose of this amended subsection would be to eliminate one of the three existing criterion by which the commissioner may determine that a community is underserved: “members of the community have contacted three or more agents or companies directly and have been declined for insurance for which they were ready, willing, able and qualified to purchase” as well as the Commissioner’s option to rely on “reports of insurers, agents, brokers, policyholders, applicants, or consumers” in making the determination that a community is underserved.

Rational for Necessity: This amendment is necessary to implement the provisions of CIC 1861.03 in that, after analysis of the data gathered pursuant to the existing regulations, the Commissioner has determined that this criterion is too vague to be useful in making annual determinations regarding the availability and affordability of insurance products in Underserved Communities.

Section 2646.6(d)

Specific Purpose: The specific purpose of this amended subsection is to eliminate the requirement that insurers declining coverages to applicants in Underserved Communities must issue and retain copies of letters of declination.

Rational for Necessity: This amendment is necessary to implement the provisions of CIC 1861.03 in that, after analysis of the data gathered pursuant to the existing regulations, the Commissioner has determined that this criterion is too vague to be useful in making annual determinations regarding the availability and affordability of insurance products in Underserved Communities.

Amended Section 2646.6(f)

Specific Purpose: The specific purpose of this amended subsection is to specify that failure to comply with the requirements of this regulation will subject the carrier to a hearing pursuant to California Insurance Code Section 1861.08.

Rational for Necessity: This amendment is necessary to implement the provisions of CIC 1861.03 in that an analysis of the data gathered pursuant to the existing regulations indicates an average of as much as 38% of carriers annually are not in compliance with the regulatory requirement.

Amended Section 2646.7

Specific Purpose: The specific purpose of this amendment is to delete the provision which allows carriers to submit Strategic Plans *in lieu* of the data required pursuant to Section 2646.6.

Rationale for Necessity: After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of a Plan *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

Amended Section 2646.8

Specific Purpose: The specific purpose of this amended subsection would be to delete the provision that allows carriers to submit Evidence Demonstrating an Existing Presence in Underserved Communities *in lieu* of the data required pursuant to Section 2646.6.

Rationale for Necessity: After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of Evidence *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

Amended Section 2646.9

Specific Purpose: The specific purpose of this amended subsection would be to eliminate the provision for Consumer Participation in the Commissioner's decision to accept or reject a Plan or Evidence.

Rationale for Necessity: After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of Plans or Evidence *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

Amended Section 2646.10

Specific Purpose: The specific purpose of this amended subsection would be to delete the provision setting forth the timelines for the Commissioner's review of Plans and Evidence.

Rationale for Necessity: After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of Plans or Evidence *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

Amended Section 2646.11

Specific Purpose: The specific purpose of this amended subsection would be to delete the provision regarding remedial action to be taken against carriers that fail to comply with Section 2646.7 or Section 2646.8.

Rationale for Necessity: After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of Plans or Evidence *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by him or that has otherwise been identified and brought to his attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner invites public comment on alternatives to the regulations